

REDUCING GRAZING LAND OF FARM OCCUPIER: IS THIS EVICTION BY OTHER MEANS?

Loskop Landgoed Boerdery (Pty) Ltd and Others v Petrus Moeleso and Others (390/2021) [2022] ZASCA 53 (12 April 2022)

In general terms, the Extension of Security of Tenure Act ('ESTA') gives people who lived on someone else's land since 4 February 1997 with permission from the owner, a secure legal right to carry on living there. The occupiers in this matter held such rights and also had an agreement with the farm owner that they could graze some cattle in certain camps. When the camps became overgrazed, the farm owner moved the cattle to another camp, without the consent of the occupants. Could this constitute eviction of the occupiers 'via a back door', as claimed, or was this a simple case of spoliation of possession?

The Judgment can be viewed [here](#).

FACTS

In May 2018, the owner of the farm Barnea in Bethlehem, Free State, obtained a report from an ecological specialist in terms of the Conservation of Agricultural Resources Act 43 of 1983 ('CARA'). The report noted that certain grazing camps, used by Mr Moeleso and 3 other occupiers ('the occupiers') were 'seriously overgrazed'. (Mr Moeleso and the others were all 'occupiers' on the farm as defined in the Extension of Security of Tenure Act of 1996. They also had consent to keep cattle there and were allocated two grazing camps for grazing purposes.)

It was not disputed that the relevant camps became overgrazed with time and required rehabilitation for a period of two years.

A copy of the report was sent to the occupiers and the Department of Rural Development and Land Reform (the Department) with a demand that the occupiers remove their cattle and, in the event of a failure to comply, that the farm owner would approach the Court on an urgent basis for an order that the cattle be removed from the farm as per the recommendations of the report.

The occupiers however refused to comply and the farm owner thereafter removed the cattle from the two overgrazed camps to another camp on the same farm. (Although an action was launched in court for an order for the removal of the cattle, this action was not finalised.)

This prompted the occupiers to approach the Land Claims Court ('LCC') for an order that their rights be restored and that the farmer's unilateral conduct in reducing their grazing camps be declared unlawful because it was akin to eviction 'through the back door as well as self-help'. The farmer, on the other hand, stated that the removal was done in order to avoid being criminally charged for contravening the provisions of CARA and was therefore effected despite the refusal of the occupiers' consent thereto. The LCC agreed with the occupiers' take and stated that the farmer's conduct in reducing the grazing area amounted to an attempt to evict in terms of the definition in ESTA. The farmer was ordered to restore to the occupiers the right to graze on a camp of at least similar capacity to the camp from which the livestock had been removed.

HELD

CARA

- Where a land owner needs to rehabilitate farm land, because of overgrazing, the land owner is entitled (within the law) to remove the cattle for such purpose, and after the land is rehabilitated, the cattle can be returned. It

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is also not disputed that the provisions of CARA impose an obligation on both the land owner and anyone who utilises farm land for grazing to protect the area from overgrazing.

Eviction via a back door?

- The occupiers' cattle were not removed from the farm, but were relocated to another grazing area on the same farm.
- ESTA defines 'evict' to mean 'to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of this Act, and "eviction" has a corresponding meaning'. What is protected by ESTA, clearly, is rights relating to residence (and not accompanying grazing rights). This conclusion is supported by the wording of section 6 of ESTA. It provides:

'Rights and duties of occupier –

- (1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February, 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.*
 - (2) Without prejudice to the generality of the provisions of section 5 and subsection (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right–*
 - (a) to security of tenure;*
 - (b) to receive bona fide visitors at reasonable times and for reasonable periods;*
 - (c) to receive postal or other communication;*
 - (d) to family life in accordance with the culture of that family;*
 - (dA) . . .*
 - (e) not to be denied or deprived of access to water; and*
 - (f) not to be denied or deprived of access to educational or health services.'*
- Section 6(2), quoted above, sets out some instances of use. All of them relate to the occupation of the land, and do not bear upon the land itself. Although the specific instances of use in section 6(2) are set out "without prejudice to the generality" of the provisions of sections 5 and 6(1), they still serve as an illustration of what kind of use the legislature had in mind when granting to occupiers the right to "use the land" on which they reside.
 - Thus the right of grazing does not derive from ESTA and rather constitutes a personal right to use the land for the purpose of grazing, such right being regulated by the agreement between the parties. An occupier is not entitled as of right to keep livestock on the farm occupied by him as an adjunct of his right of residence. His entitlement to do so is dependent on the prior consent of the owner of the property having been obtained.

The parties have mischaracterised the issues for determination in this appeal

- The real dispute between the parties was rather that the occupants were in peaceful and undisturbed possession of the grazing camps and was spoliated.
- As such the spoliation principles had to be applied. These are based on the fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the Court will summarily restore the status *quo ante*, and will do that as a preliminary to an inquiry or investigation into the merits of the dispute.
- The dispossession of the actual possession of the two camps or the quasi-possession in respect thereof by the occupiers, without consent or a court order, was unlawful and amounted to a spoliation.
- In light of the foregoing, and on the basis that the occupiers had been spoliated, the LCC's order was correct in finding that the conduct of the farm owner was unlawful. The remainder of that court's order had to be reformulated to provide that the occupiers' possession of the camps, of which they had been dispossessed, should be restored forthwith. (The farm owner must then obtain a court order should it seek to remove the cattle.)

CONCLUSION

The appeal partly succeeded.